***THE HON'BLE MR JUSTICE V.V.S.RAO**

+ WRIT PETITION Nos. 22023, 22117 AND 23865 OF 2006

-

% Dated 02.04.2007

Sri Tirumala Modern Rice Mill rep.by its Managing Partner Sri Ashok Kumar Agarwal

… Petitioner

VERSUS

$ The Chief Managing Director, Transmission Corporation of A.P. Ltd (AP TRANSCO), Vidyuth Sowdha, Khairatabad, Hyderabad and others. … Respondents.

! Counsel for Petitioners in all the writ petitions: Mr.P.Laxma Reddy

^Counsel for Respondents-1 and 2: SC for AP TRANSCO

Counsel for Respondents-3: ---

<GIST:

>HEAD NOTE:

? Cases referred

1. 1991 (3) ALT 173
2. AIR 1994 SC 544
3. 2004 (1) ALD 546
4. (2006) 3 SCC 771
5. (1987) 1 SCC 424 = AIR 1987 SC 1023
6. (1979) 2 SCC 34 = AIR 1979 SC 193
7. (2001) 7 SCC 358
8. (1985) 1 SCC 591 = AIR 1985 SC 582
9. 1991 (3) ALT 173
10. AIR 1973 SC 1034
11. AIR 1994 SC 544

12. (2006) 3 SCC 771

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.22023, 22117 AND 23865 OF 2006

DATED 02.04.2007

BETWEEN

Sri Tirumala Modern Rice Mill rep.by its Managing Partner
Sri Ashok Kumar Agarwal

… Petitioner

AND

The Chief Managing Director, Transmission Corporation of A.P. Ltd (AP TRANSCO), Vidyuth Sowdha, Khairatabad, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.22023, 22117 AND 23865 OF 2006

COMMON ORDER:

This common order shall dispose of these three writ petitions as question raised and the background of the cases is similar. The respondents in these three writ petitions are also the same.

The petitioner in W.P.No.22023 of 2006 is availing electricity supply from the respondents under L.T.Category-III service connection bearing No.7335. The second respondent inspected the petitioner's premises on 28.09.2006 and found that CT meters and CT chamber seal bit No.A40033 to be in tampered condition. On opening the CT box, it was observed that R-phase CT secondary terminal S1

connection is loose and R-phase potential connection at tapping point is loose. There were also other incriminating circumstances. The second respondent came to *prima facie* conclusion that the petitioner resorted to pilferage of energy. A case under Section 135 of the Electricity Act, 2003 (Electricity Act, for brevity) was registered and power connection was disconnected. Provisional value of electricity pilfered was assessed at Rs.5,64,429/- including electricity duty and supervision charges and the petitioner was asked to approach the Assistant Accounts Officer, Electricity Revenue Officer (ERO) for restoration of supply by paying fifty per cent of the provisional assessment value. He was also informed that necessary proceedings would be initiated for determining civil liability under Section 154 of the Electricity Act.

In other two cases also, the facts are similar though the amounts demanded vary. In all the cases, criminal cases were registered and the petitioners are informed that the cases would be referred to appropriate special Court for determination of civil liability. In all the three cases, FIR was also lodged with the third respondent, who registered crime under Section 137 of the Electricity Act. It is also the case of the petitioners that after receiving provisional assessment notices, they paid 50 per cent of the provisionally assessed value of the energy allegedly pilfered and therefore, no further action whatsoever can be taken against them.

The petitioners seek a writ of Mandamus declaring the provisional assessment order/notice insofar as it is contrary to Section 126(5) of the Electricity Act as illegal and arbitrary. They also seek a further declaration that the action of the third respondent in registering crime as illegal and unconstitutional as well as contrary to the provisions of Sections 126(4) of the Electricity Act. Their main contention is that while assessing the value of the electricity allegedly pilfered, the second respondent ought to have calculated the amounts for maximum period of six months only as per Section 126(5) of the Electricity Act. It is also their further contention that when the consumer accepts the provisional assessment and pays the amounts without any demur, further action for criminal as well as civil liability cannot be taken against the consumer as per the proviso under sub-section (4) of Section 126 of the Electricity Act.

The second respondent filed counter affidavit in all the three matters separately. It is only necessary to refer to the counter in W.P.No.22023 of 2006. It is stated in the counter that after receiving the provisional assessment order, the petitioner deposited 50% of the provisional assessment amount. However, it is denied that Section 126 of the Electricity Act is applicable even in the case of dishonest

abstraction of energy. Section 153(1) of the Electricity Act provides for fixing the civil liability as well as criminal liability under Section 135 of the Act. A reference is made to the Terms and Conditions of Supply framed by Northern Power Distribution Company Limited (NPDCL) especially condition No.10 which purportedly requires the consumer to deposit 50% of the provisional assessment amount pending adjudication by special Court for fixing civil liability.

Learned counsel for the petitioners submits that under Section 126(5) of the Electricity Act, it can be presumed that a consumer is resorting to unauthorized use of electricity for a period of three months immediately before the date of inspection in case of domestic/agricultural services. In case of other categories of services, such period can be six months. The second respondent, however, provisionally assessed the value of the energy unauthorisedly used from 09.09.2005 though inspection was conducted on 28.09.2006, which is illegal and arbitrary to sub-section (5) of section 126 of the Electricity Act. Secondly, he would urge that the petitioners have already paid the entire value calculating in terms of Section 126(5) of the Electricity Act for a period of six months and therefore, no proceedings under Part XIV and Part XV of the Electricity Act can be taken against the petitioners by driving them to Special Court for fixing civil/criminal liability. He placed reliance on the decision of the Division Bench of this Court in **Toguru Sudhakar Reddy v The Government of A.P.,**[1] and the decision of the Supreme Court in **Toguru Sudhakar Reddy v The Government of A.P.,**[2] which affirmed the Division Bench Judgment of this Court. These decisions are cited in support of the contentions that the proviso to sub-section (4) of Section 126 of the Electricity Act does not permit respondents 1 and 2 to proceed further under Part XIV of the Electricity Act. He also relied on the decision of this Court in **B.Laxmi v Assistant Divisional Engineer (OP)**[3].

Learned standing counsel for NPDCL Sri A.Bhuvan Sunder Reddy, representing Sri A.Ajay Kumar, argued as follows. A reading of sub-section (5) of Section 154 and sub-section (5) of Section 126 of the Electricity Act would not lend any support to the submission that the value of electricity unauthorisedly used can be restricted to three months or six months as the case may be. He placed reliance on the decision of this Court in **B.Laxmi** (supra). Secondly, he submits that even when a consumer accepts provisionally assessed value of used electricity, the distribution company can still initiate action under Part XIV and XV of the Electricity Act. The proviso under sub-section (4) of

Section 126 of the Electricity Act does not restrict or bar the taking of cognizance of criminal case or the civil liability case by the special Court constituted under Section 154 of the Electricity act. He submits that the proviso under Section 126(4) of the Electricity Act cannot be interpreted as rendering all the provisions in Part XIV and XV of the Electricity Act otiose and redundant. He placed reliance on **Dinesh v State of Rajasthan**[4].

Points for consideration

The background facts and the rival submissions throw up two questions for consideration.

1. Whether assessing officer is bound to value the electricity unauthorisedly used presuming such use only for a period of 3/6 months? What is the true interpretation of Section 126(5) of the Electricity Act?

2. When the consumer deposits the assessed amount, can he be subjected to further liability? What is the true interpretation of the proviso to Section 126(4) of the Electricity Act?

Principles of Interpretation

The principles of interpretation of statutes are well settled. A statute should be interpreted reading various chapter/parts, sections and subsections together as a whole. While so doing, grammatical and ordinary sense of the word should receive utmost importance unmindful of consequences of such interpretation. This was and had been the golden rule of interpretation. Next came to interpretation according to legislative intent as a logical method. The endeavour of such interpretation is to know the intention of the Legislature in making a provision, in using particular words and employing particular method in achieving clarity in the statute aimed at achieving the object, for which the law is enacted.

Legislature does not make any law simply because it has power to make such law. Statute law has a purpose. It is always to meet a given situation in the society or to regulate human relations that Legislatures embark on making laws in exercise of their power of Eminent domain, Police power or Taxing power. Those who place the law made by Legislature in the high pedestal in preference to precedent law, customary law and common law, very much agree that any law made by Legislature cannot be expected to lay down principles to meet every situation that might arise in future. The Legislature only indicates broad general principles defining rights, duties of the citizens, the power to regulate and authority to regulate such situations.

In a democracy under Rule of Law, the ultimate interpreter of law is judiciary. The Legislature indicates 'what the law shall be' but ultimately it is the judiciary, which lays down 'what the law is'. In so doing, it is but natural that the Court has to interpret the law. The power of the Court to interpret the law, however, does not enable re-writing text of the law. It is interpretation of law but not interpolation/extrapolation of statute law. In discharge of this function, the Courts are often guided by settled principles. These principles are by and large culled out from the precedents. Legislature as such does not lay down any principles of interpreting the laws made by it. The 'dictionary clause' in a statute, the explanation to a provision, and proviso to a Section or a General Clauses Act, are some methods adopted by the Legislatures to indicate tool of understanding their intent. These, however, do not and cannot always bind the Courts in finding out the legislative intention in making a law. These principles are well settled and a reference to some of the decided cases is apposite.

In **Reserve Bank of India v Peerless Company**[5], Supreme Court indicated the method of reading statute as under.

> Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. **A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section-by-section, clause-by-clause, phrase-by-phrase and word-by-word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses, we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every work has a place and everything is in its place.**
>
> (emphasis supplied)

In **Chief Justice of A.P., v L.V.A.Dikshitulu**[6], a Constitution Bench of the Supreme Court observed as under.

> The primary principle of interpretation is that a constitutional or statutory provision should be construed

'according to the intent of they that made it' (Code). Normally, such intent is gathered from a language of the provision. If the language of the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But, if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. **In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved and the consequences that may flow from the adoption of one in preference to the other possible interpretation.**

(emphasis supplied)

In **District Mining Officer v Tata Iron and Steel Company**[7], the apex Court summarized the principles thus:

A statute is an edict of the Legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the Legislature. **If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature.** This task very often raises the difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. **The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the**

varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed.

(emphasis supplied)

In Re Point No.1

This involves interpretation of Section 126(5) of the Electricity Act, which reads as under.

> **126. Assessment:-** (5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the period, occupier or possessor of such premises of place.

The above provision contains a presumption regarding the period during which a consumer unauthorisedly used electricity. Here Section 154(5) of the Electricity Act may also be noticed. It reads as under.

> **154. Procedure and power of Special Court:-** (5) The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as it if were a decree of civil court.

Section 154 of the Electricity Act deals with the power of the Special Court established under Section 153 of the Electricity Act. It is to the effect that the civil liability in terms of money shall be equivalent to two times of the tariff rate applicable. It also lays down that such civil liability at two times the tariff rate shall be fixed for the exact period of theft “if determined or for a period of twelve months preceding the date of detection of theft of energy”. So to say if it is not possible to

determine the exact period of theft, the liability permits the Special Court to determine the civil liability by applying double tariff rate for a period of twelve months: no less and no more. In the opinion of this Court, Section 154(5) of the Electricity Act, though in a different context, would certainly furnish a key to understand Section 126(5) of the Electricity Act.

Section 126 of the Electricity Act does not place any embargo like Section 154(5), with regard to the period of theft for which a person is liable to pay the assessed value. A proper reading of sub-section (5) of Section 126 of the Electricity Act would show that if it is possible for the assessing Officer regarding the period of theft, the same shall be the criteria for assessing the value of the pilfered energy. In case such determination of period is not possible, Section 126(5) of the Electricity Act lays down that irrespective of non-availability of the data, the assessing Officer may presume a period of three months for domestic/agricultural services and a period of six months for other categories as the period during which a consumer unauthorisedly used electricity. If during the time of inspection or from the record available or from the history of the service connection, the inspecting Officer or assessing Officer are of the opinion that the period during which electricity was unauthorisedly used is more than three months or six months, as the case may be, nothing prevents such Officer to take into consideration the exact period or the inferred period for the purpose of calculating value of the pilfered energy. I n **B.Laxmi** (supra), this Court considered these aspects. After analyzing Section 126 of the Electricity Act, in its entirety, this Court observed as under.

> … … Sub-section (1) of Section 126 authorises the assessing officer to inspect any place or premises, gadgets, machines, devices and may come to a conclusion that the consumer is indulging in unauthorized use of electricity. In such a case, the assessing officer has to provisionally assess *to the best of his judgment, the electricity charges payable by such person*. After so doing, such provisional assessment order has to be served on the person who under subsection (3) is entitled to file objections against the provisional assessment order before the assessing officer. The assessing officer may then afford an opportunity and pass a final order of assessment of the electricity charges payable by such person. Sub-sections (1) to (4) do not compel the person to pay any amount if he wants to file objections and invite a final assessment order. The payment of provisionally assessed amount arises only when a consumer seeks restoration of power supply.
>
> In assessing the value of the energy provisionally, as seen from sub-section (1) of Section 126, the assessing officer has to do it to the best of his judgment. The power of

assessing officer is not controlled or circumscribed by sub-section (5). Sub-section (5) of Section 126 as read above, takes care of altogether a different situation. It contains a deeming provision; a presumption. If the assessing officer has no proper material or mechanism used or pilferage of energy is of such nature that the assessing officer cannot reasonably fix the period during which there has been unauthorized use of electricity, in such cases, he can presume that there has been continuous unauthorized use of energy for a period of six months or three months as the case may be. The presumption contained in sub-section (5) does not in any manner prevent or prohibit the assessing officer while provisionally assessing the electricity charges payable by such person under sub-section (1) of Section 126 after determining actual energy pilfered.

Sub-section (6) of Section 126 stipulates that the assessment of value of the energy pilfered should be made at the rate equal to 1½ times the tariff applicable to relevant category of services. That means, if the tariff rate is Rs.6/- per unit after arriving at the total number of units of energy unauthorisedly used or pilfered, the value is to be assessed by applying the tariff rate at Rs.9/-. To that extent, the learned Counsel for the petitioner is not correct in submitting and under no circumstances, the assessment can exceed 1½ times the actual amount payable. Be it also noted that when the provision is not ambiguous or does not admit two interpretations, the Court should adopt the method of literal construction and must not introduce new concepts or new principles.

Therefore, it is not possible to accept the submission of the learned Counsel for the petitioners that while assessing value of the pilfered energy, the respondents are bound to restrict it for the period of three months/six months, as the case may be. That would be ignoring the plain language of subsection (5) of Section 126 of the Electricity Act. The point is answered accordingly.

In Re Point No.2

Consideration of this point involves interpretation of Section 126(4) of the Electricity Act, which lays down that a person, who is served with a provisional assessment order may accept the assessment and deposit the assessed amount within seven days of service of such order. In such case, there would not be any necessity to further proceed with the consumer, who was found allegedly indulging in unauthorized use of electricity as explained in the Explanation to Section 126 of the Electricity Act. This is also clarified by condition 9.2.6 of the General Terms and Conditions of Supply (GTCS) formulated by Distribution Company. The said condition reads

as under.

> 9.2.6 In the event that the consumer accepts the provisionally assessed electricity charges he must **pay the full amount to the Company as per the order and obtain a receipt for the same. The provisional assessing officer shall not pursue the case further or revise the payment of electricity charges by the consumer on account of the unauthorised use of Electricity and shall close the case within one working day**, on production of the receipt for the full amount by the consumer. In the event of failure on the part of the consumer to make the full payment within seven days as specified under Section 126(4) of the Act, the Company may disconnect the service in accordance with Section 56 of the Act.
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> (emphasis supplied)

The above condition even bars the coercive disconnection under Section 56 of the Electricity Act within seven (7) days time granted to the consumer in the provisional assessment order. It also lays down that the provisional assessing officer shall not pursue the case and shall close the case within one day after receipt of the payment of provisionally assessed charges for the alleged pilfered electricity. Without anything else, the case of pilferage or unauthorized use of electricity is to be given a quietus. The provisions of Part XIV dealing with offences and penalties and the provisions of Part XV containing the method and manner of determining criminal and civil liability against the consumer by the Special Court would have no application when the consumer pays provisionally assessed amount under Section 126(4) of the Electricity Act. The intention of the Legislature to that effect becomes more patent and glaring if one looks at the Proviso to sub-section (4) of the Section 126 of the Electricity Act. It provided that "in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever".

The learned standing counsel for APNPDCL, however, strenuously contends that the provisions of Part XII dealing with "Investigation and Enforcement, (which provide for determination of criminal and civil liability against the consumer for theft of energy before the Special Court) do not bar criminal action against consumer. He submits that the proviso to Section 126(4) of the Act being an exception thereto does not regulate or control enforceability of provisions in Part XIV and Part XV of the Electricity Act.

In construing the statute, the Courts recognize and use internal as well as external aids, to show intention of the Legislature. As

indicated supra, when there is seemingly a conflict between various provisions of the State, these aids help to arrive at conclusion as to the legislative intent. Long title of the Act, Preamble of a Statute, Headings or Titles prefixed to Sections or group of Sections, Marginal Notes, the Proviso to Section, the Explanation and Schedules are generally considered as internal aids. 'Proviso' is considered to exempt something out of the enactment or to qualify something enacted thereunder. The same, however, is not always correct as seen from the decided cases. Suffice to refer to an authoritative Indian Textbook on Interpretation of Statutes. Justice G.P.Singh in his treatise 'Principles of Statutory Interpretation' elucidates as under.

> The better rule appears to be not to give undue weight to the aforesaid distinctions which are somewhat obscure, and to direct one's attention to the substance rather than to the form adopted by the Legislature…. Little, if any, significance is to be given to the use of the word 'provided'. In Acts of Congress, that word is employed for many purposes. Sometimes, it is used merely to safeguard against misinterpretation or to distinguish different paragraphs or sentences. For the proper construction of the provision in question, consideration need not be limited to the sub-division in which it is found; the general purpose of the section may be taken into account….
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> … **A sincere effort should be made to reconcile the different provisions in case of apparent conflict bearing in mind that Parliament will not at the same time give something by one hand and take back the same thing by another**. In case, however, of a real conflict, a question will arise as to which of the two conflicting provisions should prevail. The answer to such a question should not be so much made to depend on the form of the provisions or on their sequence in the statute as on their substance by determining which of them is the leading provision and which the subordinate one.
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> (emphasis supplied)

Craies as well as Maxwell, the two celebrated authors on interpretation of statutes, also opine that when the Proviso of an Act is repugnant to the purview of the Act, the Proviso shall stand and it only speaks the last intention of the makers of the law. They also opine that if a Proviso cannot be construed otherwise than contradicting the main enactment then the Proviso will prevail on the principle that, "it speaks last intention of the makers"[8].

In **S.Sundaram Pillai v V.R.Pattabiraman**[9], a Division Bench of the Supreme Court held as under.

> The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot

be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

The Supreme Court also summed up the purposes, that were served by a Proviso, as under.

(1) qualifying or excepting certain provisions from the main enactment;
(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
(4) it may be used merely to act as a optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

In **T.Sudhakar Reddy v Government of A.P.**[10], a Division Bench of this Court after referring to **Sundaram Pillai** (supra) and other Supreme Court decisions held that the Proviso depending on the context has to be interpreted as an independent provision. It is apt to excerpt the following.

> We consider the impugned third proviso as an independent provision since it dispenses with resort to bye-laws for the purpose of nomination of women members. The express language employed in the provision cannot be ignored by us. The impugned third proviso ought to have been inserted by the draftman as an independent provision and that would have avoided the present controversy. We have already referred to the views of the cerebrated authors – Craies and Maxwell – on judicial decisions laying down that if the proviso is repugnant to the main enactment, it shall still stand. The decisional law referred to above lays down that a proviso sometimes has to be construed as an independent provision. A proviso sometimes can have the effect of substantially altering the main section as noticed in **Hiralal Vatan Lal v S.T.O., Kanpur**[11].

The decision of this Court in **T.Sudhakar Reddy** (supra) was confirmed by the Supreme Court[12]. Learned counsel for the Distribution Company has placed reliance on **Dinesh v State of Rajasthan**[13] in support of the contention that the Proviso should be construed as an exception and not as an independent provision. After perusing the said Judgment, this Court is of considered opinion the precedent cited by the learned counsel does not lay down any such principle nor does it help the counsel. Yet another argument which is passingly made by the learned counsel for the respondents is that

when the consumer resorted to theft of electricity, the civil liability and criminal liability are to be determined only by Special Court by reason of Section 154 of the Electricity Act, and therefore, Section 126(4) of the Electricity Act with its proviso cannot determine the exercise or non-exercise of jurisdiction by the Special Court in theft cases. The submission is again made in ignorance of the Electricity Act and GTCS.

'Unauthorised use of electricity' means usage of electricity (i) by any artificial means; or (ii) by a means not authorized by the concerned person or authority or licencee; or (iii) through a tampered meter; or (iv) for the purpose other than for which the usage of electricity was authorized (see Explanation to Section 126 of the Electricity Act.) Theft of electricity is defined in Section 135. A reading of the same would show that theft, *inter alia*, is dishonest tapping of electricity from overhead or underground cables or facilities of Distribution or transformation licensee, tampering the meters and damaging and destroying electrical meters (see Section 135 of the Electricity Act). A careful reading of Section 135 and Explanation to Section 126 would show that some of the unauthorized uses of electricity also amount to theft and in a given case, theft itself amounts to unauthorized electricity. When once a provisional assessment is made, an inference can be drawn that it is falling within the scope of 'unauthorised use of electricity and not a theft'. If the assessing officer resorts to serving a provisional assessment order, the same would be referable to Section 126(2) of the Electricity Act. Parts XIV and XV of the Electricity Act do not contemplate the provisional assessment of the energy pilfered in the case of theft. Here, one may notice that condition 10.2 of GTCS refers to provisional assessment of energy consumed by theft but the same is conspicuous by its absence in the provisions of the Electricity Act. From this, what would emerge is that when a provisional assessment order is made and the consumer accepts and deposits the amount without demur, consumer cannot be subjected to any further liability and no further action can be taken against him. In case of theft, however, in the event of provisional assessment order not being served as required under Section 126(2), only remedy available for the inspecting/assessing officer would be to refer the cases to Special Court for the purpose of determining civil and criminal liability. In such a case, it may be reiterated that the question of serving a provisional assessment order does not arise and there would not be any opportunity for the consumer to pay the provisionally assessed amount.

In this case, the petitioners admittedly paid 50% of the provisional assessment amount and claim the benefit of the proviso to

Section 126(4) of the Electricity Act. Going by the language of the proviso relied on by the petitioners, it must be held that they cannot get any benefit out of it. Section 126(4) of the Electricity Act lays down that entire provisionally assessed amount has to be deposited within seven days of service of the order and only in such an event the consumer is discharged from further liability. Payment of 50% after receipt of the provisional assessment order would presuppose that the petitioner intends to file objections and invite a final assessment order as contemplated under Section 126(3) of the Electricity Act. When the consumer pays the entire provisional assessment amount, Section 126(4) of the Electricity Act comes into effect. If a consumer pays only 50% of the provisionally assessed amount, so as to obtain re-connection of power supply (in case it is disconnected), it would only indicate state of mind that such consumer is objecting the provisional assessment made by the provisional assessing authority. Such consumer cannot get benefit under Section 126(4) read with its proviso. In these cases, the petitioners are not entitled to the benefit under the proviso to Section 126(4) of the Electricity Act.

In the result, for the above reasons, the writ petitions are disposed of giving liberty to the final assessing authority to pass appropriate orders after obtaining objections from the petitioners. If the cases are already referred to Special Court, it is always open to the petitioners to take all such pleas as are open under law. There shall be no order as to costs.

(V.V.S.RAO,J)

02 .04.2007.

LR copy be marked.

(By order)

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[1] 1991 (3) ALT 173

[2] AIR 1994 SC 544

[3] 2004 (1) ALD 546

[4] (2006) 3 SCC 771

[5] (1987) 1 SCC 424 = AIR 1987 SC 1023

[6] (1979) 2 SCC 34 = AIR 1979 SC 193

[7] (2001) 7 SCC 358

[8] a) Craies on Statute Law, 1963 edn., p.217

b) Maxwell's Statutory Interpretation, 12th edn., p.189

[9] (1985) 1 SCC 591 = AIR 1985 SC 582

[10] 1991 (3) ALT 173

[11] AIR 1973 SC 1034

[12] AIR 1994 SC 544

[13] (2006) 3 SCC 771